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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,097	08/26/2003	Timothy B. Carroll		6438

7590 07/13/2004  
Pennington, Moore, Wilkinson,  
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Post Office Box 10095  
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EXAMINER


FULTON, CHRISTOPHER W

ART UNIT PAPER NUMBER

2859

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/650,097	Applicant(s)  CARROLL, TIMOTHY B.	
	Examiner Christopher W. Fulton	Art Unit 2859	

-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/26/03</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: The top guide and the edge guide are not structurally connected or related to each other only the relationship to an unclaimed objected is stated in the claims.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw in view of Dickins.

The device as claimed is substantially disclosed by Shaw with a top guide (upper section of 13) having an upper surface and a lower surface, wherein the lower surface is positioned to bear against the top surface of the object, an edge guide (lower back section of 13) positioned to bear

against the edge of the object, and an opening through the device where the measuring tape 5 is inserted through the device, but lacks the opening being a trough in the upper surface of the top guide. Dickins teaches using a trough in the upper surface of an edge guided device for a tape to be extended through so the indicia on the top surface of the tape can be viewed without obstruction. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to move the opening of Shaw to the upper surface of the device as taught by Dickins so the indicia of the tape can be viewed without obstruction.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw in view of Dickins as applied to claim 1 above, and further in view of Burnett.

The device as claimed is disclosed by the combination of Shaw and Dickins together as stated in the rejection recited above for claim 1, but lack an index finger hole through the edge guide to aide the user in holding the device during use of the device. Burnett teaches using a through hole in a guide device for insertion of a finger to aide in holding the device during use of the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make a through hole in the edge guide of the combination of Shaw and Dickins as taught by Burnett for insertion of a finger to aide the user in holding the device during use of the device.

6. Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw in view of Dickins as applied to claim 1 above, and further in view of Nicely.

The device as claimed is disclosed by the combination of Shaw and Dickins together as stated in the rejection recited above for claim 1, but lack a finger trough on the back side of the

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edge guide to aide the user in holding the device during use of the device and a relief bevel on the contact side of the edge guide so the device will slide easier along the edge of the object. Nicely teaches using a finger trough on the back side of the edge guide to aide the user in holding the device during use of the device and a relief bevel on the contact side of the edge guide so the device will slide easier along the edge of the object. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make a finger trough on the back side of the edge guide of the combination of Shaw and Dickins as taught by Nicely to aide the user in holding the device during use of the device. It also would have been obvious to one of ordinary skill in the art at the time the invention was made to make a relief bevel on the contact side of the edge guide of the combination of Shaw and Dickins as taught by Nicely so the device will slide easier along the edge of the object.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw in view of Dickins as applied to claim 1 above, and further in view of Harris.

The device as claimed is disclosed by the combination of Shaw and Dickins together as stated in the rejection recited above for claim 1, but lack a reference mark on the upper surface of the top guide to aide in locating the edge of the object during use of the object. Harris teaches using a reference mark 60 on the upper surface of the top guide to aide in determining the distance from the marking element to the edge of the object. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a reference mark on the upper surface of the top guide of the combination of Shaw and Dickins as taught by

Harris to indicate the location of the edge of the object for determining the distance of the marker from the edge of the object.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw in view of Burnett.

The device as claimed is substantially disclosed by Shaw with a top guide (upper section of 13) having an upper surface and a lower surface, wherein the lower surface is positioned to bear against the top surface of the object, an edge guide (lower back section of 13) positioned to bear against the edge of the object, and an opening through the device where the measuring tape 5 is inserted through the device, but lacks an index finger hole through the edge guide to aide the user in holding the device during use of the device. Burnett teaches using a through hole in a guide device for insertion of a finger to aide in holding the device during use of the device.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make a through hole in the edge guide of Shaw as taught by Burnett for insertion of a finger to aide the user in holding the device during use of the device.

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw in view of Burnett as applied to claim 6 above, and further in view of Dickins.

The device as claimed is disclosed by the combination of Shaw and Burnett together as stated in the rejection recited above for claim 6, but lack the opening being a trough in the upper surface of the top guide. Dickins teaches using a trough in the upper surface of an edge guided device for a tape to be extended through so the indicia on the top surface of the tape can be viewed without obstruction. Therefore, it would have been obvious to one of ordinary skill in the

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art at the time the invention was made to move the opening of the combination of Shaw and Burnett to the upper surface of the device as taught by Dickins so the indicia of the tape can be viewed without obstruction.

10. Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw in view of Burnett as applied to claim 6 above, and further in view of Nicely.

The device as claimed is disclosed by the combination of Shaw and Burnett together as stated in the rejection recited above for claim 6, but lack a finger trough on the back side of the edge guide to aide the user in holding the device during use of the device and a relief bevel on the contact side of the edge guide so the device will slide easier along the edge of the object. Nicely teaches using a finger trough on the back side of the edge guide to aide the user in holding the device during use of the device and a relief bevel on the contact side of the edge guide so the device will slide easier along the edge of the object. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make a finger trough on the back side of the edge guide of the combination of Shaw and Burnett as taught by Nicely to aide the user in holding the device during use of the device. It also would have been obvious to one of ordinary skill in the art at the time the invention was made to make a relief bevel on the contact side of the edge guide of the combination of Shaw and Burnett as taught by Nicely so the device will slide easier along the edge of the object.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw in view of Burnett as applied to claim 6 above, and further in view of Harris.

The device as claimed is disclosed by the combination of Shaw and Burnett together as stated in the rejection recited above for claim 6, but lack a reference mark on the upper surface of the top guide to aide in locating the edge of the object during use of the object. Harris teaches using a reference mark 60 on the upper surface of the top guide to aide in determining the distance from the marking element to the edge of the object. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a reference mark on the upper surface of the top guide of the combination of Shaw and Burnett as taught by Harris to indicate the location of the edge of the object for determining the distance of the marker from the edge of the object.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher W. Fulton whose telephone number is (571) 272-2242. The examiner can normally be reached on M-W & F 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

CWF



Christopher W. Fulton  
Primary Examiner  
Art Unit 2859